BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the name of "Maritime Communications / Land Mobile LLC" Alleged Debtor-in-Possession:	
Renewal Applications: AMTS Licenses WQGF315, -316, -317, -318 ("Licenses")	FNs: 0007603776, -777, -778, -779
Extension Requests: to extend/waive the Licenses' construction/ buildout deadline	FNs: (no Form 601s submitted)
Assignment Applications: to assign the Licenses to Choctaw Holdings, LLC	FN: 0005552500
Proceedings under ECFS	Dockets 11-71 and 13-85
The "Case" defined herein: the above and interdependent proceedings and decisions	Above and other: in ULS, ECFS, FOIA and other proceedings

To: Office of the Secretary
Attn: Chief, Wireless Bureau
Filed: On ULS under the Licenses and FNs. And on ECFS under 11-71 and 13-85

ERRATA COPY[*] - REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION AND REVIEW UNDER COMMUNICATIONS ACT §405 AND FCC RULE §1.106, UNDER §1.41 [1] AND THE PUBLIC INTEREST, AND UNDER CONSTITUTIONAL DUE PROCESS[2]/[3]

Warren Havens, & Polaris PNT PBC
2649 Benvenue Ave, Berkeley CA 94704
Phone (510) 914 0910
July 14, 2017

[*] Deletions in strikeout; additions in blue and boxes; slight spacing and italics changes made.
[1] And under any other rule the FCC deems to apply including §1.115.
[2] The defined terms used herein have the same meaning they had in the petition for reconsideration.
[3] §1.106 refers to §1.49, which pertains to pleading specifications, including length, and in subsection (e) instructs that electronic filings on ULS are subject to specifications in §22.6, which does not exist. Thus, it is questionable what page or word limit applies to such electronic ULS filings. Petitioners are experienced with electronic filings in court, including under FRCP, which set a pleading limit by total countable words, rather than page length. It appears the FCC may have intended something like that, but never enacted §22.6.

Petitioners hereby reply to the Choctaw opposition to their Recon (the "Opposition" or "Choctaw Opp").[4] Among other things, Choctaw asserted the following in its Opposition:

> ….Choctaw believes the Wireless Telecommunications Bureau ("WTB") carefully considered all of the facts and came to a well-reasoned and correct decision. Choctaw thus urges careful consideration and an expeditious decision on all points raised by Mr. Havens in the PFR so that Choctaw can move forward in getting this spectrum put to its highest and best use and the process of repaying creditors can move forward….WTB has had ample opportunity to review the Renewal and Assignment Applications. It has carefully reviewed these applications and, in both instances, applied the appropriate legal precedent and come to decisions that comport with such precedent….Choctaw appreciates WTB's reasoned analysis and stands ready to be a licensee....

In its Opposition, Choctaw does not concede any point in Petitioners' Recon. One point in the Recon was that the central logic of the Order is that the extension, and therefore the renewals, by waiver, is justified by the alleged proper "Second Thursday" petition by MCLM, joined by Choctaw. In that regard, it is clear that the Commission erred including re: innocent creditors and under §309(j).

Innocent Creditors. In this regard, contrary to the Opposition's just noted assertions and position, the FCC's December 2016 decision to grant the MCLM second request (on reconsideration, but actually it was based on new alleged facts of the bankruptcy of Mr. Depriest) and the related full record show that MCLM submitted no such innocent-creditor showing, but Choctaw (which ~~is~~ acts as the agent of MCLM or the licensee with standing in this matter) asserted to the FCC that the bankruptcy court in some way determined this FCC "innocent creditor" issue, but Choctaw submitted no such showing. Further, Havens' "Petition 2" of FCC 16-172, at its pages 17-18 argues how the FCC's "Second Thursday" Order, FCC 16-

[4] Mr. Scot Stone of the FCC's Mobility Division granted an extension until today, July 14, 2017, to file a reply. Separately, Havens will be submitting confidentially to FCC information supporting the extension grant, as requested by the FCC in its grant. / This filing is made on behalf of only Havens, individually, and Polaris. / A separate reply is being filed regarding MCLM's opposition. Both replies apply to all captioned matters.

172, improperly relied upon Choctaw's false assertions that somehow the bankruptcy court determined who were "innocent creditors", when that is not the bankruptcy court's jurisdiction to determine, but is ~~rather~~ the FCC's job under its Second Thursday policy. This fundamental error in FCC 16-172 shows that Havens has a very strong chance of overturning FCC 16-172 on appeal and that the Order's decision was not "well-reasoned" or correct, or the Order's finding that the grant of lawful relief was consistent with FCC 16-172, since FCC 16-172 contained such a fundamental error. The FCC's "Second Thursday" Order, FCC 16-172, states at its ¶15 the following (footnotes inline, emphasis added):

> 15. The record also establishes that the creditors of MCLM who would benefit from the proceeds obtained from assignment of the licenses are innocent creditors. None of the creditors has been accused of wrongdoing, either in the HDO or otherwise.~~5~~[*] Choctaw asserts, without contradiction in the record,[**] that "there was extensive testimony before the Bankruptcy Court on the issue of innocent creditors,"51 and we give great weight to the Bankruptcy Court's findings that the Plan represents a good faith effort to benefit innocent creditors of MCLM without unfair discrimination.52….
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> 51/ See Choctaw Opposition at 15.
>
> 52/ See, e.g ., Confirmation Order at 3.

The FCC never properly determined who were innocent creditors, and that is a fatal flaw in FCC 16-172, that Havens has raised on appeal to the FCC, and that makes FCC 16-172 *ultra vires* and *void ab initio*. The bankruptcy court did not determine who were "innocent creditors" as that term is meant under the FCC's Second Thursday policy, which requires the FCC to determine who are the innocent creditors versus those who had a relation with the bad actors or knowledge of the bad actions under FCC rules. The bankruptcy court did not make a determination of "innocent creditors" for purposes of FCC Second Thursday policy because that is the sole jurisdiction of the FCC and the bankruptcy court is not the authority to decide that issue based on the facts before and to be obtained by the FCC, not the bankruptcy court. Thus,

[*] [**] False – Havens and others *extensively did* – following *FCC 00-335* (see Reply to MCLM).

the FCC failed to make the proper determination of innocent creditors and without that it could not determine what was valid debt and if the value of the Licenses exceeded it (which it clearly does).[5] This shows that the interrelated and interdependent FCC decisions, FCC 16-172, DA 17-26 and DA 17-450, are not correct in their analysis or "well-reasoned" or justified under FCC rules or in the public interest.[6]

Authority. In addition, a major component of the MCLM-Choctaw assertion of need for an extension waiver is that it has taken a long time to secure "Second Thursday" relief, over two years from the date the Commission denied in 2014 the first "Second Thursday" petition attempt. The second attempt, falsely characterized as a request for reconsideration of denial of the first attempt, was actually a different request upon new facts not disclosed in the bankruptcy in a

[5] Both the FCC Administrative Law Judge and the FCC prosecution team's lead attorney, Pamela Kane, made it clear in the record that, if the value of the subject Licenses exceeds the amount of the FCC-determined innocent debt, then they don't see how "Second Thursday" relief could be obtained. See e.g. Transcript of June 4, 2012 Proceeding Before the FCC, at pp. 572-598.

[6] As one example of FCC failing to determine innocent creditors, Petitioners refer to Oliver Phillip's claim. As shown by Havens in his challenges to MCLM and Choctaw's Second Thursday requests (but not addressed by the FCC), Phillips' Court judgment was against DePriest for business matters unrelated to MCLM, as evidence by the June 30, 2009 Court Judgment (that Havens has previously presented to the FCC). These include as the Court Judgment shows a promissory note from a 1996 settlement for $5 million, value of Phillips' MCT Russia options of approximately $3 million, and stipulated notes amounting to approximately $3 million during the period 2001 to 2004 (before MCLM even existed). Oliver Phillips' debt claim was solely against Donald DePriest, but somehow ended up being assumed by MCLM for no consideration to MCLM at all. Petitioners assert that this can only mean that Phillips and Donald DePriest agreed to improperly shift Phillips' debt with Donald DePriest over to MCLM, because they knew Donald DePriest was the real controller of MCLM and could get it to do so, even though both knew that MCLM's asserted position before the FCC is that Donald DePriest had no control or interest in MCLM. It also explains why Phillips was willing to give up his claim against DePriest personally in DePriest's personal bankruptcy, because he knew it would still be paid by MCLM. All of MCLM's bad actions were already known when Phillips and DePriest entered into the "Contract and Settlement Agreement" contained in Phillips' proof of claim, Claim 66-1 (at its Exhibit A). That is just one example of why DePriest's, and now MCLM's, single largest creditor was not "innocent", and shows why FCC 16-172 failed to determine "innocent creditors". Havens has raised this issue in his challenges, including his "Assignment Recon" of DA 17-26 (at page 8, footnote 11) and his "Petition 2" of FCC 16-172, at its page 17, and in his prior challenges to MCLM's licenses and applications, including in Docket 13-85. In other words, the FCC's Second Thursday decision, FCC 16-172, impermissibly provides hidden benefit to Donald DePriest by above, and keeping Critical RF.

disclosure statement required for a Chapter 11 Plan and Plan Order, but simply devised by Choctaw, MCLM and Donald DePriest, based upon an alleged involuntary bankruptcy of Mr.DePriest. But that personal bankruptcy was the means by which Choctaw and MCLM, for their own purposes, sought a second chance at "Second Thursday" relief. Donald DePriest is an admitted co-controller or controller of MCLM (spousal affiliation admission, but also facts in record and FCC 11-64 support this) and he has intimate connections with all parties in interest in the MCLM bankruptcy, including the parties behind and in Choctaw, and at least the other major creditors (e.g. Oliver Phillips), and certainly with the co-controller, Sandra DePriest. This two plus year period second attempt, from the date the Commission rejected the first "Second Thursday" attempt to the date MCLM, with Choctaw, sought the extension and renewals, does not appear authorized in the bankruptcy for the above noted reason, and thus the relief obtained would be *ultra vires* (outside required authority). Choctaw (and MCLM) could have, but did not, seek approval from the bankruptcy court for this second "Second Thursday" attempt in the two-plus year period, which they assert to be a proper time period for the extension. (See Appendix 2 re: unauthorized actions).

Extensions. Bureau's Public Notice Supports Grant of Recon. The Opposition argues that the "Bureau's" analysis and decision in its Order were correct, and that the FCC should expeditiously proceed to decide on the Recon to allow Choctaw to proceed with its Plan. However, the Order was a decision by the Division, not the Bureau. The Division's Order is the antithesis of the FCC acting in the public interest and stands in conflict with Commission rules and precedents: as argued in the Recon, it rewards MCLM for years of cheating and rule violations, by finding that said bad actions (that directly resulted in HDO/OSC FCC 11-64, Docket 11-71 hearing, Docket 13-85, and various other challenges and proceedings) can be the basis for grant of extraordinary waiver relief (relief that lawful actions cannot obtain): in this

case grant of a 2-year extension, so that MCLM can assign the Licenses to Choctaw—something that no other licensee is permitted to do under §1.946(e).

Contrary to the Opposition's assertions, the Wireless Telecommunications Bureau has effectively agreed with Petitioners' Recon's facts and arguments in its recent Public Notice, DA 17-573, released June 12, 2017 (the "Bureau PN") (Exhibit 1). It is the Bureau PN that shows the legal precedent that should be followed, not what Choctaw believes it to be. The Bureau PN clearly affirms the Recon's facts and arguments that grant of any extension of time was not permitted by §1.946(e) and 47 U.S.C. §309, and that MCLM clearly failed to meet the criteria for an extension of time under §1.946(e). Therefore, the Bureau should grant the Recon and overturn the Division's Order that is directly contrary to the public interest, including because it provides waiver relief based on alleged delays caused by MCLM's own bad actions and bad business decisions, which cannot be justification to grant a waiver of the Commission's rules in the public interest--that is improperly treating bad actions by a licensee (and resulting delays caused by those bad actions) as being in the public interest.

The Order was by the Division, but the Bureau PN is by the Bureau, so the Bureau PN effectively trumps the findings of the Order and supports grant of the Petition and Recon. The Bureau PN makes clear that any extension of time to construct must provide certain types of facts and circumstances, subject to limits imposed by the Commission's rules and case law, to qualify for grant. The Bureau PN states at page 1:

> Given these important purposes, the FCC has been clear that requests to extend construction obligations will not be routinely granted. The Commission's rules and case law impose limits on the types of arguments and factual circumstances that would qualify a licensee for an extension. We thus take this opportunity to remind licensees that this long-standing approach to enforcing the FCC's construction obligations will continue to apply going forward.

As the Petition and Recon showed, MCLM's extensions requests did not come close to meeting the rule and law-based qualifications for grant. See Appendix 1 hereto that contains

certain cites from the Bureau PN relevant to the following discussion. The Bureau PN confirms what the Petition and Recon showed, which is that §1.946(e) clearly does not permit grant of an extension of time (an extension grant is a type of waiver) to construct in order to assign licenses to a third party. This means the Division's 2-year extension of time grant is outside of the FCC rule authority, and thus *ultra vires* and void.

In addition, the Bureau PN makes clear that the Division could not grant an extension of time to MCLM based on MCLM's assertions of delays in being able to construct because it was waiting for success in the 11-71 hearing or on obtaining permission from the Commission to keep the Licenses via its second *Second Thursday* request. As shown above, the Bureau PN states (emphasis added), "the Commission's rules do not contemplate extensions of construction deadlines for licensees that fail to meet construction obligations because of miscalculations or erroneous predictions about such factors as…or timing and success in obtaining permissions that may be necessary for construction." The Division's Order flies in the face of this statement, and thus, should be overturned.

As the Petition and Recon showed, and the Opposition fails to refute, it was solely due to MCLM's own bad decisions and bad actions that it was unable to meet the construction-buildout deadline; actions and reasons that were completely within its own control and that are not "unique or unusual" as meant under the Commission's waiver standard. MCLM made the business decision to pursue bankruptcy, to seek *Second Thursday* relief (along with Choctaw), and to challenge FCC 11-64 and participate in the 11-71 hearing. None of those matters were "beyond" its control or that were "unique" or "unusual" warranting waiver grant in the public interest. To the contrary, they were entirely within MCLM's control and decision-making—in fact, it was MCLM's actions and decisions to cheat at Auction 61 and to violate Commission rules and to continually misrepresent facts that caused its situation. Contrary to the Opposition's assertions that the Division's Order got it right, the Bureau's PN firmly supports the Petition's

and Recon's position that the Division got it entirely wrong. In fact, as the Petition and Recon showed, all the reasons the Division gave in its Order as to why MCLM should get an extension were caused by MCLM's own actions within its control, including cheating at auction, continuing to misrepresent to the FCC after the auction, choosing to challenge the FCC's HDO 11-64 and participate in the 11-71 hearing, pursuing Second Thursday relief, choosing not to settle litigation matters, etc. As the Recon argued, the FCC cannot reward MCLM with an extension and waiver relief based on alleged delays caused by MCLM's own bad actions and bad business decision. This is now further supported by the Bureau PN.

Contrary to the Opposition's assertions that the Division got it right in the Order and did proper analysis and cited proper legal precedent, Petitioners refer to the Bureau PN's cited precedent, *Redwood Wireless Minnesota, L.L.C.* , Order, 17 FCC Rcd 22416, 22417-23, paras. 3-13 (WTB 2002) (denying extension request because of licensee delays in constructing due to business disputes, etc.) ("*Redwood*"), as further support that the Petition and Recon are correct and that the Division's Order's finding that MCLM met the requirements for grant of an extension waiver is wrong. As in the *Redwood* case, MCLM's asserted reasons for grant of an extension do not represent circumstances "beyond their control." As the Petition and Recon show, and as stated above, MCLM chose to take the actions that put it in its situation. Those were not "beyond its control", but are entirely within MCLM's control and were due to MCLM's business decisions. They are also not or "unique or unusual circumstances" meriting grant of a waiver, since deliberate violation of FCC rules (cheating and misrepresentation, etc.) cannot form the basis for waiver relief, since that would be the antithesis of the public interest. As the Bureau said in *Redwood* (at ¶7):

> As has been noted in the context of another extension request, "in its licensing of various wireless telecommunications services, the Commission has repeatedly ruled that business decisions made by licensees which ultimately prove misguided should not influence Commission determinations made in the course of managing the spectrum."

And as in *Redwood* (see ¶7), MCLM could have and should have anticipated delays caused by its actions and the resulting FCC 11-64, Docket 11-71 and Docket 13-85 and should have taken measures to ensure timely construction. In fact, MCLM admitted that it decided to ***cease*** – abandon – alleged operation of all of its site-based stations. That was a business decision by MCLM, and supported by Choctaw. If MCLM had not done that, then it could have met the construction deadline for its geographic Licenses. Not to add, MCLM held the Licenses for almost 5 years before FCC 11-64 was released and before it filed for bankruptcy, and MCLM chose not to pursue any construction during that period. MCLM was clearly aware of its due diligence obligations as the Bureau PN makes clear above (Auction of Automated Mar. Telecomms. Sys. Licenses Scheduled for Aug. 3, 2005, Public Notice, 28 FCC Rcd 7811, 7823 (WTB 2005), but it decided to abandon ~~er~~ them. As such, since MCLM's extension does not fall within the only two situations under the extension waive rule, §1.946(e), for grant, and is actually prohibited by §1.946(e), then the Division's only option was to recognize automatic termination of MCLM's Licenses, as the Bureau PN states (footnote inline):

> As the Commission's rules specify, "if a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically (in whole or in part as set forth in the service rules), without specific Commission action, on the date the construction or coverage period expires."5/
>
> 5/ See id. § 1.946(c) (emphases added). The service rules for certain radio services specify that a licensee's failure to meet its interim construction requirement accelerates the licensee's final construction requirement and license term by a specified number of years. See, e.g ., 47 CFR § 27.14(s)(3).

MCLM's Licenses ~~are~~ automatically terminated "without specific Commission action."[7]

Re: 47 U.S.C. §309(j) and Construction Standard: Contrary to the Opposition, the Division~~s~~ did not reach the proper conclusion and apply the appropriate legal precedent. The Choctaw

[7] Havens, or anyone ~~from the public~~, can point out clear facts to the FCC that show MCLM's licenses have terminated as a matter of FCC rule and law, and the FCC cannot avoid or ignore those facts of termination since they have already occurred and such termination is "without specific Commission action," and under 47 USC 309(9)(2): "other matters…it may…notice."

Opposition argues that the FCC should proceed to expeditiously decide on this matter, so that Choctaw can proceed to sell spectrum to fulfill the bankruptcy Plan to repay creditors. However, the Order is not permitted by Section 309. First, Section 309(j) of the Communications Act requires that the Commission award spectrum licenses by a system of lawful competitive bidding. Also a ~~A major~~ purpose ~~of that~~ is to promote "recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment."[8] The MCLM assignment to Choctaw violates this statutory mandate. It will provide a windfall ~~to Choctaw~~ and Choctaw will be unjustly enriched, outside of the system of competitive bidding. That is, the FCC is selecting the next licensee, rather than taking back the Licenses for the lawful ~~and re~~ auction 61 ~~ing them~~ results as required (see also reply to MCLM). ~~by the Communications Act, as amended by the 1996 Telecom Reform Act. In essence, the Commission is deciding that the "auction winner" is Choctaw, and only Choctaw~~. Allowing MCLM to get an extension so it can assign the Licenses to Choctaw, ~~who can then~~ to profit unjustly* and at Petitioners' expense, ~~from the sale of unconstructed, expired Licenses~~ would violate Section 309(j) of the Communications Act ~~by not allowing the American public to realize a portion of the value of the spectrum through a spectrum auction as mandated by the statutez. In fact, given the fair market value of the AMTS spectrum (or~~ (~~e~~ * Even considering MCLM's fire sale price in its sale to SCRRA at approx. $0.50/MHz-Pop, in public records~~,~~), ~~the FCC would obtain much more money by reauctioning the spectrum than it will from allowing Choctaw to obtain and sell some spectrum to pay creditors (possibly~~ in the order of $60 million or more ~~at reauction; at least much more~~ than MCLM's alleged debt ~~to the FCC~~).

~~Also, the FCC is aware that railroads and utilities are highly interested in AMTS spectrum for their communications needs, so there would be no shortage of interested bidders). Thus, the FCC is violating Section 309(j) by not taking back the spectrum and reauctioning for multiples more than MCLM's debt to the FCC – it is not in the public interest for the FCC to grant extraordinary relief to MCLM and Choctaw, so MCLM can keep the Licenses and~~

[8] 47 U.S.C. §309(j)(3)(C). Auction 61 already has a lawful result excluding MCLM- that is meant, as Havens has asserted since MCLM's auction 61 forms 175 and 601.

~~assign them to Choctaw so Choctaw can obtain a windfall (the Licenses are worth much more than the total debt), versus reauctioning the Licenses so the public obtains that monetary benefit and puts the spectrum into the hands of the highest, lawful bidder (if FCC does not do that in Auction 61 context).~~

Further, the current construction requirement is in the context of Section 309(j) (auctioning) and not in the context of a Second Thursday policy that arose decades ago, well before the 1996 Telecom Reform Act. That is, the FCC is not applying the construction standard in the context of Section 309(j) or its current rules. Those do not support grant of MCLM's requested relief (supported by Choctaw), but support reclaiming the Licenses for the valid ~~re~~ auction result. ~~because MCLM failed to meet the applicable standards.~~

Trafficking. Contrary to the Opposition's assertions that the Order was correct and "well-reasoned" in its decision, Petitioners assert, in addition, that the Division's Order is supporting "trafficking" as defined under §1.948(i). because MCLM has stated it will not operate the Licenses and that it is solely seeking the extensions and renewals in order to assign the Licenses to Choctaw, and Choctaw has stated that it intends to then sell spectrum to third parties, such as railroads and utilities, to then pay alleged creditors, including the FCC.

Re: the Opposition's footnote 8. Petitioners refer to Exhibit A in the their reply to MCLM. The Court's ruling was based on MCLM, et al. filings and is being appealed.

Respectfully submitted,

/s/
Warren Havens
Warren Havens, an Individual
And for Polaris PNT PBC, as President

Contact information is on the Caption page.

July 14, 2017

This Errata copy is executed and submitted Sunday July 16, 2017,
/s/
Warren Havens.

Appendix 1

The Bureau PN states, *inter alia*, at pages 2-3 (footnotes inline, emphasis added):

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> ….As the Bureau has previously made clear, it is a licensee's responsibility to conduct its due diligence, to assure that it can construct and meet service requirements, and to confirm that the spectrum is suitable for the licensee's business plans and needs.7 The Commission makes no representations or warranties about use of the spectrum, and a license is not a guarantee of business success.8
>
> As a consequence, the Commission's rules do not contemplate extensions of construction deadlines for licensees that fail to meet construction obligations because of miscalculations or erroneous predictions about such factors as costs, demand, developments in the market, or timing and success in obtaining permissions that may be necessary for construction. Rather, we have always expected licensees to factor in these considerations from the start because construction obligations are the building blocks to making available service that puts scarce spectrum resources to use. When a licensee fails to deploy on a timely basis, the Commission holds the licensee accountable in accordance with its rules. Specifically, under Section 1.946(e) of the Commission's rules, extensions of the time period for meeting these construction and service requirements are permitted only in two situations—either "involuntary loss of site" or "other causes beyond [a licensee's] control."9 This rule specifically cautions that the following do not qualify as grounds for an extension: "failure to obtain financing, to obtain an antenna site, or to order equipment in a timely manner,"10 or "because the licensee undergoes a transfer of control . . . or intends to assign the authorization," or "to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct."11
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> 7 The Commission's auctions procedures public notices remind prospective bidders of these due diligence obligations. See , e.g. , FCC Announces Auction Schedule for the General Wireless Commc'ns Serv. , Public Notice, 12 FCC Rcd 21913, 21914 (WTB 1997); Auction of Automated Mar. Telecomms. Sys. Licenses Scheduled for Aug. 3, 2005, Public Notice, 28 FCC Rcd 7811, 7823 (WTB 2005); Auction of Advanced Wireless Servs. (AWS-3) Licenses Scheduled for Nov. 13, 2014 , Public Notice, 29 FCC Rcd 8386, 8403, para. 46 (WTB 2014).
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> 8 See id .
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> 9 47 CFR § 1.946(e)(1). See also , e.g. , Bristol MAS Partners , Order, 14 FCC Rcd 5007, 5008-10, paras. 5-8 (WTB 1999) (Bristol) (denying extension request given licensee failing to obtain equipment based on vendors that it chose); Eldorado Commc'ns, L.L.C. , Order, 17 FCC Rcd 24613, 24616-19, paras. 7-13 (WTB 2002) (Eldorado) (denying extension request given licensee's delays in ordering equipment and decision to change the type of technology that licensee would use); Redwood Wireless Minnesota, L.L.C. , Order, 17 FCC Rcd 22416,

22417-23, paras. 3-13 (WTB 2002) (denying extension request because of licensee delays in constructing due to business disputes); Motient Commc'ns , Order, 19 FCC Rcd 13086, 13089-93, paras. 8-15 (WTB 2004) (Motient) (denying extension request because of licensee delays due to various reasons, including general economic downturn, lack of financing, and purported lack of available equipment); Warren C. Havens , Order, 27 FCC Rcd 5841, 5848-52, paras. 16-25 (WTB 2012) (Havens) (denying extension request based on licensee delays due to purported lack of equipment and business decisions about which technology to deploy), recons. denied , Order on Reconsideration, 29 FCC Rcd 1019, 1029-32, paras. 21-27 (WTB 2014); Highland Holdings, LLC , Memorandum Opinion and Order, 27 FCC Rcd 14184, 14187-91, paras. 8-19 (WTB 2012) (Highland) (denying extension request because failure to order equipment and decision not to construct was choice within licensee's control); Intelligent Transp. and Monitoring Wireless, LLC , Order, 31 FCC Rcd 11528, 11531-40, paras. 10-27 (WTB 2016) (denying extension request for various reasons, including that the licensee pursued business plans based on unsupported technology, lack of demand for services licensee sought to offer, delayed purchase of equipment until close to the construction deadline, and failure to construct any facilities or offer any service); Gilpin Cnty. Sheriff's Office , Order, 29 FCC Rcd 96, 97-98, paras. 8-13 (PSHSB 2014) (Gilpin) (denying extension request that was based on the licensee's reliance on a waiver supplied to another licensee without sufficient linkage between the facts of both licensees' circumstances).

10 47 CFR § 1.946(e)(2). See also , e.g. , Bristol , 14 FCC Rcd at 5008-10, paras. 5-8 (lack of equipment); Eldorado , 17 FCC Rcd at 24616-19, paras. 7-13 (lack of equipment); Havens , 27 FCC Rcd at 5848-52, paras. 16-25 (lack of equipment); Motient , 19 FCC Rcd at 13089-93, paras. 8-15 (lack of equipment and financing); Highland , 27 FCC Rcd at 14187-91, paras. 8-19 (lack of equipment).

11 47 CFR § 1.946(e)(3). See also , e.g. , Rachael E. Schwartz , Letter, 20 FCC Rcd 12325, 12326-27 (WTB 2005) (denying extension request given unsuccessful attempts to assign and failure to obtain equipment).

Appendix 2

From Administrative Law Judge Sippel's *Memorandum Opinion and Order*, FCC 14M-18, relealsed June 17, 2014 at ¶¶67-72 (footnotes inline after each paragraph):

A Troubling Joint Stipulation

67. In their Joint Stipulation, the movants state that "Maritime is in the process of filing applications to modify its authorizations to delete therefrom" 73 site-based licenses. 189 Both parties argue that, as a result, Issue G becomes moot as to those licenses. 190 However, the movants guardedly assert that the proposed cancellation "does not constitute an admission on the part of either Maritime or the Bureau on the merits of Issue G as to the [construction and operational status of the] foregoing site-based licenses, but is being done solely to expedite resolution of Issue G and eliminate or minimize the need for further litigation. " 191

189 / Joint Stipulation at 2-4 ~ 3.
190 / Bureau's Reply at 3 ~ 3.
191 / Jd. at 4 ~ 4 (emphasis added).

68. Mr. Havens asserts that in the relevant parallel bankruptcy case, 192 the crux of Maritime's First Amended Plan of Reorganization ("Plan") contemplates that Maritime pursue the transfer of all of Maritime's licenses to Choctaw so that they could be sold by Choctaw for the benefit of creditors. 193 Mr. Havens points out that the Joint Stipulation would result in a material modification of the Plan. 194 He further argues that any "agreement purporting to surrender a considerable portion of Maritime's FCC license in exchange for, among other things, a termination of proceedings" requires prior approval of a Bankruptcy Court after notice and hearing. 195 Mr. Havens argues that the Bankruptcy Code requires disclosure to creditors of adequate information on a proposed modification so they may determine if they should withhold or withdraw acceptance of the Plan. 196 In response, the Bureau argues that Mr. Havens' position is irrelevant because it is premised on his misinfom1ed belief that the Joint Motion is a proposal for a consent decree. 197 But that is of no significance on disclosure to creditors. The Bureau also clarifies that it does not seek summary decision with regard to the authorizations specified in the Joint Stipulation, but that it onl~ requests that the Presiding Judge deem Issue G moot with respect to those authorizations. 98 However, the Bureau is silent on the critical questions of whether the movants are deviating from the Plan and whether creditors have received sufficient notice of Maritime's possible deviations.

69. The broad strokes of the Havens arguments are interesting, insightful, and in part persuasive. His view that the Joint Motion reads as a proposal for a consent decree is erroneous, but not essential to the crux of his argument. He raises the point that the Joint Stipulation would delete 73 site-based facilities from Maritime's universe of licenses. These licenses are assets otherwise available to pay Maritime's creditors, having value estimated in the tens of millions of dollars. 199 That use of Maritime's assets does not appear to have been approved by the Bankruptcy Court. The Plan contemplated and apparently approved by the Bankruptcy Court is simply one wherein Maritime "will transfer, assign, and sell to [Choctaw] Holding all of [Maritime's] right, title, and interest

in its [FCC licenses]."200 The Plan clearly contemplates that Choctaw will market and sell all of those licenses and then distribute resulting revenue, products, and proceeds to creditors. 201 The Plan does not contemplate canceling any licenses for the benefit of Maritime in expediting the resolution of this proceeding, or for the purpose of minimizing the need for further litigation.202

192 / In re Maritime Communications/Land Mobile, LLC, Case No. 11-13463-DWH (Bankr. N.D. Miss., filed Aug. I, 2011).
193 / Opposition at 27-28.
194 / Id. at 27.
195 / Id. (citing 11 U.S.C. § 1127(b)). The Bankruptcy Court having jurisdiction here is the United States Bankruptcy
Court for the Northern District of Mississippi.
196 / Id. at 28.
197 / Bureau's Reply at 2-3 ~ 2.
198 / Id. at 3 ~ 3.
199 / See In re Maritime Communications/Land Mobile, LLC, First Amended Disclosure Statement for Maritime Communications/Land Mobile, LLC, Exhibit A at 6 (July 27, 2012).
200 / In re Maritime Communications/Land Mobile, LLC, First Amended Plan of Reorganization at I 0 (Sept. 25, 20 12) (emphasis added).
201 / Id.
202 / Joint Stipulation at 4 ¶ 4. The inconvenient litigation is not of the nature of a private "strike suit." It was initiated by the Commission based upon Maritime's conduct as a licensee.

70. Maritime's stipulated cancelation of73 of 89 site-based licenses amounts to the surrender of 82% of all site-based licenses that remain at issue in this proceeding. The Presiding Judge is concerned that this would be a significant deviation from the Plan. Just a cursory comparison of the licenses listed in Schedule B23 of Exhibit A to the First Amended Disclosure Statement with the licenses listed in the troubling "Limited Joint Stipulation Concerning Issue G Licenses" that accompanies the Joint Motion shows that Maritime and the Bureau would delete 71 of the 127 site-based licenses listed in the Plan that are intended to be included among Maritime's assets.203 By seeking to delete 56% of its site-based licenses, Maritime would preclude Choctaw from selling them for the benefit of creditors. That possible deviation from the Plan filed with the Bankruptcy Court would deny creditors the benefit of significant assets solely to facilitate this litigation?04 There is no indication that the Bankruptcy Court and the creditors approved, or would approve, the cancellation of the assets that are identified in the Joint Stipulation. There is no indication that the Joint Stipulation was even filed and presented to the Bankruptcy Court.

71. The Presiding Judge must decline to rule on whether cancellation of Maritime's licenses via the Joint Stipulation runs afoul of bankruptcy laws or violate the current Plan. The Bankruptcy Court has jurisdiction to decide such issues. However, without further explanation or specific approval by the Bankruptcy Court, the Joint Stipulation cannot be accepted here. Nor, in light of this argument newly raised by Mr. Havens, can the Presiding Judge now accept the May 31, 2012, Limited Joint Stipulation Between Enforcement Bureau and Maritime as to the deletion of severallicenses.205 Therefore, for

the reasons stated above, stations KA98265, KCE278, KPB531, KUF732, WFN, WHW848, WHX877, WRD580, KAE889 (Locations 8, 14, 26, 27, 28, 33, 37, 39, 40, and 44), WHG 693 (Block A), WHG 701-703 (Block A), WHG 705-754 (Block A), and WRV374 (Locations 2, 3, 17, 24, 27, 28, 29, 31, and 36) are no longer be deemed canceled for purposes of Issue G.

72. There are significant concerns that permitting these licenses to be canceled would be contrary to the public interest, and/or would undermine the Plan as contemplated or approved by the Bankruptcy Court. The Presiding Judge will reconsider this ruling only if the Bankruptcy Court makes an informed and specific ruling confirming that the surrender of Maritime's licenses as contemplated by the Joint Stipulation is permitted under the Bankruptcy Code, is allowed by Court procedures and practices, is authorized by the Plan, and is approved by the Bankruptcy Court. Failing to obtain such a ruling from the Bankruptcy Court, Maritime will be expected to present evidence at hearing as to the construction and operational status of each of the 73 licenses, as well as those that were the subject of its May 31, 2012, Limited Joint Stipulation.

203 / The remaining two site-based licenses that Maritime and the Bureau seek to delete, WHV733-2 and WHV733-3, are omitted from Schedule B23 entirely. The omission of such assets from filings with the Bankruptcy Court creates further concerns about whether full disclosures have been made.

204 / The Presiding Judge is additionally concerned that Maritime may not have adequately disclosed the risks in this proceeding to its creditors. Maritime's Third Amended Disclosure Statement only makes passing references to Issue G. It does not explain that the outcome of this proceeding may result in the automatic cancelation of some or all of Maritime's site-based authorizations. In re Maritime Communications/Land Mobile, LLC, Third Amended Disclosure Statement for Maritime Communications/Land Mobile, LLC at 17, 31 (emphasis added). Instead, Maritime implies that Issue G can be resolved via the Second Thursday doctrine. Id. at 32. As the Presiding Judge has repeatedly found, Issue G does not involve Maritime's basic qualifications to hold a license and thus cannot be resolved via the Second Thursday doctrine. In the Presiding Judge's view, this misstatement by Maritime of the Commission's policies leaves the creditors without a full understanding of the possible outcomes of this proceeding.

205 / See Memorandum Opinion and Order, FCC13M-16 at 9, 21, 13 ¶¶ 31-33.

Declaration

I, Warren Havens, declare under penalty of perjury that the foregoing filing, including any attachments and exhibits, was prepared pursuant to my direction and control and that the factual statements and representations contained herein known to me are true and correct.

/s/

_____

Warren Havens

July 14, 2017

Certificate of Filing and Service

I, Warren C. Havens, certify that I have, on July 14, 2017:[*]

(1) Caused to be served, by placing into the USPS mail system with first-class postage affixed unless otherwise noted below, a copy of the foregoing filing, including any exhibits or attachments, to the following:

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, DC 20033-0428
(Counsel to MCLM/MCLM DIP)

Wilkinson Barker Knauer, LLP
ATTN Mary N. O'Connor
2300 N Street, NW, Suite 700
Washington, DC 20037
(Counsel to Choctaw)

(2) Caused to be filed the foregoing filing as stated on the caption page, and thus, as I have been instructed, [**]provide notice and service to any party that has or may seek to participate in dockets 13-85 and 11-71 that extend to this filing, and the defined "Order" and "3 Orders."

/s/

Warren Havens

This Errata Copy is served by the same means described above, on July 17, 2017.

/s/

Warren Havens

[*] The mailed service copies being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.
[**] The FCC Office of General Counsel informed me regarding others' filings concerning MCLM relief proceedings that I was served in this fashion. I assume OCC does not apply a different standard to others. If OGC has a different standard, it can make that clear and public.